

## *Selecting the Right Bankruptcy Chapter*

Unless you are a family farmer or a person with significant assets or extremely large debts, then your bankruptcy options are simple. On the one hand, you can select Chapter 7 and face liquidation of any nonexempt assets you may own, or you can select Chapter 13 and face a prolonged period of repaying your debts.

We cannot advise you personally which course of action is best in your individual case. Only a competent, experienced attorney who has closely examined your circumstances can help you select the right chapter.

A few questions you should ask yourself when evaluating your situation are

- o Do I have nonexempt property I do not want to lose in a Chapter 7 liquidation?
- o What are my chances of holding onto that property, especially if it was used to secure a debt, in a Chapter 13 case?
- o Will I be able to commit myself to several years of a tight budget in which all my disposable income will be used to repay my debts in a Chapter 13 case?
- o Do I want to resolve my financial problems quickly, or can I tolerate dragging them out over three or more years?
- o Can I continue the required payments during the course of the plan without incurring any significant new obligations that may impact on my ability to carry out the plan?
- o Am I concerned with what is perceived by some people as the "stigma" attached to "straight" bankruptcy? If so, should I consider only a repayment plan under Chapter 13?

*Questions To Ask Yourself To Help Determine  
If You Are Headed For A Financial Crisis*

Answer each question yes or no. Before answering, search deep inside yourself to be sure you are answering each question honestly.

1. Without pulling out the latest statements, are you unaware of how much money you presently owe on all your credit cards, revolving charge accounts, and outstanding loans?  
☐ Yes                      ☐ No
2. Do you have trouble making the minimum payments on your credit accounts and loans?  
☐ Yes                      ☐ No
3. Do you have trouble making your monthly rent or mortgage payment?  
☐ Yes                      ☐ No
4. Have you used cash advances from your credit cards to pay normal routine living expenses?  
☐ Yes                      ☐ No
5. At bill-paying time, do you wonder where your money went?  
☐ Yes                      ☐ No
6. Do the monthly payments on your credit card and other consumer loans (excluding mortgage payments) exceed 25 percent of your take-home pay?  
☐ Yes                      ☐ No
7. Are you able to put even a small amount of money from each paycheck into a savings or similar account?  
☐ Yes                      ☐ No
8. Do you have to work overtime just to keep up with your monthly bills?  
☐ Yes                      ☐ No
9. Do you use money reserved for other financial obligations, such as insurance or taxes, to pay monthly bills?  
☐ Yes                      ☐ No

10. Is a creditor threatening to sue you, obtain a judgment against you, or garnishee your salary?  
☐ Yes                      ☐ No
11. Are you consistently late in paying any of your bills?  
☐ Yes                      ☐ No
12. Have you recently been denied credit because of information in your credit file?  
☐ Yes                      ☐ No
13. Do you feel threatened or harassed by bills you are unable to pay?  
☐ Yes                      ☐ No
14. Are you worried that your recent bill-paying habits will result in your being evicted, your mortgage foreclosed, or your car or furniture repossessed?  
☐ Yes                      ☐ No
15. Do you live with the hope that a winning lottery ticket or the death of some unknown relative will give you the money you need to catch up with your bills?  
☐ Yes                      ☐ No
16. Will the loss of two week's pay result in your not being able to pay your bills?  
☐ Yes                      ☐ No

If you answered yes to more than half these questions, you are probably facing serious financial trouble in the near future. Therefore, you should seek professional help concerning your finances.

## *The Advantages of Chapter 13*

Chapter 13 offers debtors a wide range of advantages over a straight bankruptcy when a Chapter 7 is a serious option. The advantages over doing nothing to ward off your creditors are tremendous. These advantages are:

1. With certain exceptions such as child support and spousal support, Chapter 13 will allow more debts to be discharged than will a Chapter 7 filing, including some which are considered nondischargeable in a Chapter 7 case.
2. Assets which are otherwise considered nonexempt in a Chapter 7 filing can be protected from seizure in a Chapter 13 case.
3. Under certain circumstances, a "hardship discharge" can be granted a Chapter 13 filer before the debts have been repaid.
4. The automatic stay of actions by creditors which is afforded by any bankruptcy filing extends to any co-signers of the debts included in a Chapter 13 bankruptcy filing.
5. A person filing Chapter 13 generally remains in possession of all property. You may continue to use personal property which has a lien against it while the creditor's claim is being paid off under the plan.
6. If, in the middle of your bankruptcy case, your situation changes and you want to drop the filing, you can do so if you filed Chapter 13; but if you filed a Chapter 7 case, the court must approve dismissing the case.
7. Your credit standing may receive greater protection when you file a Chapter 13 rather than a Chapter 7 case.

A vital derived from a Chapter 13 filing is that under the proper circumstances, an unsecured creditor is forced to accept a payment plan which pays only a portion of the money owed, and more importantly, creditors can be prevented from foreclosing or placing liens on your property.

## *The Disadvantages of Chapter 13*

While unsecured creditors may be compelled to accept a payment plan for less than the full amount due them, in most situations secured creditors cannot be forced to do so. Most secured creditors are dealt with separately. A Chapter 13 plan depends on the debtor maintaining a stable and constant income. The plan may fail if the debtor's income is interrupted by a layoff or injury or some other contingency that reduces or eliminates the income. Compared to Chapter 7 cases, Chapter 13 cases last must longer and are more expensive. Unlike a Chapter 7 filing, when you file a Chapter 13, your employer may sometimes need to be informed of your situation.

Finally, although your credit standing may be better protected, the fact that you filed a Chapter 13 petition will be reflected in credit reports and may deter some creditors from granting you new credit. This decision depends on the policy of the companies from which you seek credit.

### *Who Is Eligible for Chapter 13*

Chapter 13 is available to any individual meeting the criteria in the list that follows. It is open to individuals, married couples filing a joint petition, and owners of small businesses operating as sole proprietorships, but not to partnerships or corporations. To qualify for a Chapter 13 filing, debtors must meet the following guidelines:

1. They must reside in, do business in, or own property in the United States.
2. They must have a regular source of income that is sufficient enough to allow participation in what will ultimately be an approved repayment plan.
3. Their unsecured debts must be less than \$100,000.
4. Their secured debts must be less than \$350,000.
5. They may not be a stockbroker or commodity broker.
6. They were not debtors in another bankruptcy case that was dismissed for certain technical reasons during the previous 180 days.

If a married couple files a joint petition, only one party is required to meet the criteria of having a regular income, but the debt limits apply to both parties. If a husband has \$80,000 in unsecured debts, and his wife has \$55,000 in unsecured debts, the total unsecured debts for the filing would be \$135,000 thus

making them ineligible to file a joint petition. A couple in this situation might have to file separate petitions, depending on the circumstances, particularly if they co-signed for each other.